

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
February 26, 2018 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, Mike Winge, Jeff Valiant, Chairman.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, staff.

MEMBERS ABSENT: Terry Dayvolt

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Moesner the Minutes of the last regular meeting held January 22, 2018 were approved as circulated.

VARIANCES:

BZA-V-18-02

APPLICANT & OWNER: David & Annette Goldenberg

PREMISES AFFECTED: Property located on the W side of Vine St. approximately 0' NW of the intersection formed by Vine St. & SR 68, Lynnville 306 W SR 68

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an unattached accessory building to be converted in to a Single Family Dwelling not meeting minimum side yard requirement in an "R-1A" One Family Dwelling zoning district. *Complete legal on file. (Advertised in The Standard on February 15, 2018)*

Dave Goldenberg was present.

The Chairman called for a staff report.

Mrs. Rector stated we are missing one green card from Blake Feldbusch but we do have the white pay receipt showing it was mailed to the correct address on file in the Auditor's office. She said the existing land use is an unattached accessory building. She said all surrounding properties are R-1A with residences or vacant and there is no flood plain. She said this is the same property as last month where they wanted to place a manufactured home on it, now he wants to sell it with the existing storage building and the individual wants to make it into a residence. She said we have already discussed in the office with the gentleman who is thinking

of purchasing it that it would have to meet all building code requirements and be brought up to single family dwelling standards and Dennis Lockhart has spoken to him too so they realize they will have to do that. Mrs. Rector stated a copy of this application was sent to the Town Board of Lynnville to see if they have any comments and we have not heard anything from them. She said since this is a corner lot either street can be used as frontage. She said one side needs to be 25' from the right-of-way and the other side must be 15' from the right-of-way. She said this building meets the front yard requirements of 25' using SR 68 as the front but it does not meet either side yard requirement; one side is 4.25' and should be 6' and the side along Vine Street is 13' and should be 15' to meet requirements. She said so both sides are about 2' short of our requirements. She said as she said at the previous meeting this land was previously split by other people and they have left this accessory building sitting on this lot. Mrs. Rector asked if they approve this would the previous variance stay or what would they do there.

Attorney Doll said no, if there is a favorable consideration for this tonight then he'd recommend in subsection 8:10(f) that the word "withdrawn" be substituted with either "vacated, nullified, or found to be void" or something to that effect. He said the word "withdrawn" is different than us invalidating it where it requires the applicant to withdraw it but once it's been approved I don't think we can withdraw it because it has been acted on. He said for those reasons he thinks that what they did last month be vacated or nullified.

Mrs. Rector said okay. She said the applicant's proposed statement "Purchased lot approximately three years ago with an existing building on front. I now wish to convert the existing building to a home."

The Chairman asked if Mr. Goldenberg had anything to add to the staff report.

Mr. Goldenberg said no, he was ecstatic that it was going to be turned into a residence. He said he thinks that will be good for Lynnville, Warrick County, and the neighbors.

Mike Moesner said so basically they are going to convert that into a house instead of building another house there.

Mr. Goldenberg said yes, instead of putting a modular home back there the barn will be converted to a residence and have already talked to Dennis and are ready to go forward.

Mrs. Rector said it is her understanding that they are not going to make it any larger; that is what he said to us in the office.

Mr. Goldenberg said that is his understanding too. He said he told him if he did he would have to come back and go through them again but they are not planning on doing that.

The Chairman asked how big the building was...20 by 40.

Doris Horn said it's one of those log two-story barns.

Mr. Goldenberg said yes and they are going to finish the second story too.

Mike Winge said so it'd be 1600 square feet.

Mrs. Rector said they will have to bring us a water and a sewer permit from Lynnville to show that they have utilities existing to change it to a house. She said they won't have to get an Improvement Location Permit because they are not adding anything on, they are just changing the use. She said they do have to get a building permit for remodeling and a driveway permit from the town.

Jeff Willis said what if they added on in the future, if they stayed outside of the parameters will they need another Variance?

Mrs. Rector said this Variance tonight is according to this plot plan you have on file. She said if they want to expand it in anyway and make it more non-conforming they'd have to come back. She said if it met they'd be fine.

Mr. Goldenberg said they could put the same size mobile home out the side of it but it would have to fit within the parameters is his understanding.

Mike Winge said as long as the 20 by 40 has not changed he is within what he is approved of.

Mrs. Rector said he would have to meet the side setbacks.

Discussion ensued about future additions to the existing barn being required to meet side yard setback requirements.

Jeff Willis said he wanted to make sure that if somebody wanted to add on they didn't have to come back for a Variance as long as they were meeting the setbacks.

Bill Byers said so he is not planning on putting anything on the back of the property at all.

Mr. Goldenberg said he is taking the existing structure and turning it into a home. He said the other Variance is gone, vacated, whatever they wanted to do but he can't remodel the building to make it a home and then put a mobile home there.

The Chairman asked say tomorrow this whole deal falls through.

Mr. Goldenberg said he would jump up and down with joy if it does but he'd be back here to get it back to the other way. He said he does have a deposit from him so he's fine either way but he is not going to fall through, he already has builders and things...

Ascertaining no remonstrators present and no more questions from the Board the Chairman called for a motion.

I, Mike Winge, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is this is a pre-existing non-conforming use that resulted from a previous land division that left limited other options for a residential use for this property.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month

period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to any water permit needed being obtained.
 - b) Subject to any sewer permit needed being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to any Building Permits needed being obtained.
 - f) Subject to BZA-V-18-01 being vacated.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said the approval would be ready by Wednesday.

Mr. Goldenberg said the buyer has already talked to the town but he won't do anything for at least a week or two because he has to get stuff out of there.

OTHER BUSINESS: None

ATTORNEY BUSINESS:

Attorney Doll said there is a hearing on the Prime Foods case on April 3rd on the question of whether the petitioners are grieved parties that have standing or not; that is the only issue. He said not the propriety of the decision. He said that's assuming that Judge Grainger will be back from his medical leave.

Mike Moesner asked at this point who are the grieved parties.

Attorney Doll said that would be the Cobbs and Anthony Long who has cut a deal it just has not been formalized yet in which there are some exchange of properties between Prime Foods and Mr. Long.

Mrs. Rector asked if he had filed to withdraw yet.

Attorney Doll said not yet. He said he has filed a motion to suspend him participating in hearings while they work out transferring deeds of the properties so that just leaves the Cobbs.

Mike Moesner said so if this hearing says that they have standing the case will continue; is that correct.

Attorney Doll said that is correct. He said at this point the Cobbs have not provided any discovery information that would support their contention of harm of the aggrieved party and the court has bent over backwards to give them additional time and he has now pushed the final deadline to give them opportunity to present additional evidence that will be presented at this hearing. He said they have pushed that date back to March 28th for a hearing on April 3rd.

Mrs. Rector asked if they had an attorney.

Attorney Doll said they do not nor have they identified a single expert that will testify the diminution of property values or anything else.

Mike Moesner said so if they don't have standing then is that it.

Attorney Doll said yes the case will be dismissed.

Mike Moesner asked what the odds of that happening were.

Attorney Doll said we can't really predict anything but we feel very good about our case.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no further business the Chairman called for a motion.

Mike Moesner made a motion to adjourn the meeting. Motion was seconded by Paul Keller and unanimously carried. The meeting adjourned at 6:19 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held February 26, 2018.

Sherri Rector, Executive Director